IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1495 of 2001

For Approval and Signature:

HON'BLE MR.JUSTICE R.S.GARG

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : YES

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SALIM ABDUL SATTAR DHADA

Versus

ORIENTAL INSURANCE CO.LTD.

Appearance:

1. Special Civil Application No. 1495 of 2001

MR HM PRACHCHHAK for Petitioner

MR PK JANI for Respondent

CORAM : HON'BLE MR.JUSTICE R.S.GARG

Date of decision: 15/04/2005

ORAL JUDGEMENT

#. Heard learned counsel for the parties.

#. The petitioner-Salim Abdul Sattar Dhada is before this Court under Article 226 of the Constitution of India with a prayer that the chargesheet issued against him (Annexure:D) dated 11.1.2001, be quashed and the petitioner be exonerated of the charges levelled against him and pending admission, hearing and final disposal of this petition, this Court may issue a direction to the respondent to revoke the chargesheet at its earliest or in the alternative, stay the disciplinary proceedings initiated against the petitioner by the respondent.

#. Facts leading to the present writ application are that the petitioner, when he was under orders of transfer, was placed under suspension, the order of suspension is at Annexure:D dated 23rd February, 1995. The petitioner thereafter, came to this Court and challenged the said order in Special Civil Application No. 11895 of 2000. A learned Single Judge of this Court by his order dated 26.4.2001 dismissed the writ application observing that there were no reasons to interfere with the order of suspension. It appears that thereafter, on 11.1.2001, a chargesheet was served upon the petitioner, informing him that disciplinary proceedings against the petitioner would be drawn under Rule 25 of General Insurance (CDA) Rules, 1975. Articles of Charges and Statement of Imputation of Misconduct against the petitioners were also served upon him. List of documents was also served. The petitioner thereafter, made an application to the department for supply of certain documents. In the writ application it was stated that these documents were not supplied to him, but the respondent in counter-affidavit submitted that these documents have already been supplied to the petitioner.

#. It appears that immediately after finding that the petitioner has committed misconduct on certain charges, a First Information Report was also made to the C.B.I. The Central Bureau of Investigation, after making complete investigation, filed Chalan/Chargesheet against the interest of the petitioner. The said criminal matter is pending consideration.

#. It appears that during the pendency of the said criminal action, on certain representations made by the petitioner, his suspension has been revoked and he has been allowed to join the duties.

#. Though some different reliefs have been claimed in the writ application, but during the arguments, learned counsel for the petitioner submitted that the inquiry proceedings deserve to be stayed till final disposal of

the criminal matter pending before the competent court. Placing strong reliance upon the judgment of the Supreme Court in the matter of Capt.M. Paul Anthony Vs. Bharat Goldl Mines Ltd. & Anr. reported in 1992 (2) SLR 338, it is contended that if the criminal allegation and the departmental charges are on the same facts and the evidence virtually would be the same to arrive at a finding then causing serious prejudice to the interest of the delinquent, departmental inquiry cannot be continued. On the other hand, learned counsel for the respondent submitted that the said judgment of the Supreme Court has been considered by the Supreme Court in the matter of Kendriya Vidyalaya Sangathan & Ors. Vs. T.Srinivas, reported in GLH 565, and the Supreme Court, after considering the totality of the facts, observed that before staying the criminal proceedings, the Court must look into the propriety of such stay, because, in a criminal case, accused would be convicted if the charges are proved against him, while in a departmental inquiry, the department, after considering the gravity of the misconduct may or may not continue such an employee in services. His submission is that even if foundational facts are identical, then too, departmental inquiry ordinarily, unless there are compelling reasons, cannot be stayed.

#. In the present matter, the Articles of Charges has levelled the following charges:-

[a] He has disobeyed the lawful and reasonable orders of his superiors;

[b] He has absented himself from his appointed place of work from 23.1.95 to 25.3.97 without permission of Competent authority and;

[c] He has misguided and misrepresented to the competent authority Porbandar under his own signature, prepared claim vouchers and claim disbursement vouchers twice and thrice in respect of the same claims resulting into the financial loss to the Company to the extent of Rupees Fifteen lacs approximately.

The police has filed chargesheet levelling the charges against the petitioner that the petitioner, while working and posted as Assistant in Motor Claim Department of OIC Ltd., Porbandar, prepared more than one claim vouchers/cheques against a single claim with the help of unknown private persons. By this, after entering into criminal conspiracy with other private persons, he abused

his official position as public servant and dishonestly obtained pecuniary advantage for himself and for others to the tune of Rs.28,88,262/- against these vouchers/cheques.

#. True it is, that the foundational facts are the same. It is also true that the material on which the complainant/department is placing reliance would be same, but the question still would be that can such employee be suffered by the establishment when the department/establiehment/employer is prima facie satisfied that the employee has committed great/grave misconduct.

#. In the criminal matter, mens rea will have to be seen. If the petitioner proves that he had no criminal intention, but simply committed an act which was negligent or rash or reckless, criminal court may acquit him but in the departmental matter, such negligent/reckless or rash act may lead to some punishment.

##. In the matter of Kendriya Vidyalaya Sangathan, the Supreme Court has observed that advisability, desirability or propriety, as the case may, in regard to a departmental enquiry has to be determined in each case taking into consideration all facts and circumstances of the case.

##. From these observations made by the Supreme Court, it would appear that the Supreme Court was of the opinion that stay of the departmental proceedings pending the criminal proceedings is not rule of thumb or law of hammer. Before exercising discretion, the Court has to look into advisability, desirability and/or propriety in regard to a departmental inquiry. If the Court, prima facie, is satisfied that it is advisable and desirable to stay the departmental proceedings, then, nothing can stop the Court from exercising jurisdiction, but in a case where the Court is of the opinion, that it would neither be advisable nor desirable nor it would be proper nor would it be judicious on the part of the Court to stay the proceedings, then the departmental proceedings cannot be stayed. In the said matter, against the respondent of the said matter, charges of illegal gratification were levelled. On the said charges, he was being prosecuted and at the same time, he was being proceeded with in the departmental inquiry. The High Court observed that in view of the pendency of the criminal matter, departmental proceedings could be stayed. The Supreme Court interfered with the order of the High Court, observing

that the approach and the objective in the criminal proceedings and the disciplinary proceedings is altogether distinct and different. The Supreme Court observed that in the disciplinary proceedings, the question is whether the respondent is guilty of such conduct as would merit his removal from service or a lesser punishment, as the case may be, whereas in the criminal proceedings the question is whether the offences registered against him are established and, if established, what sentence should be imposed upon him. In the present matter, the allegations against the present petitioner are that he played fraud by exploiting his official position, prepared more than one cheques/vouchers in relation to the very same claim in conspiracy with certain persons and caused illegal loss to the establishment. If on these charges, the criminal court finds him guilty, then he would certainly be punished. In the departmental inquiry, charge against him is that by preparing more than one vouchers/cheques in relation to the same claim and by making misrepresentation and misguiding the competent authority, he caused loss to the establishment. I have already observed that in a criminal case, the criminal intent and mens rea would be most important and the court will have to look into it. A negligent act in discharge of the duty may not amount to an offence, but a negligent act in discharge of the duty would certainly be misconduct within the service rules. In the present matter, if the respondents are proposing to continue with the inquiry, then, in the opinion of this Court, they are absolutely justified, because, by proceeding with the inquiry, they would, at least, be reaching to a conclusion that the petitioner is guilty of misconduct or not and if guilty, what punishment should be awarded to him.

##. Taking into consideration the totality of the circumstances and the discussion aforesaid, I do not find any merits in this writ application. It is accordingly dismissed. Rule is discharged. Interim order is vacated.

[R.S. GARG, J.]
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